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Mr. DYER. Gentlemen, this is a meeting of subcommittee No. 2, which has been called for the purpose of giving consideration to two bills, one a bill relating to the municipal court of the District of Columbia (H. R. 4471), and the other a bill making certain changes in the District of Columbia Code (H. R. 6025).

We have Justice Gould, of the District Supreme Court, with us this morning.

Judge Gould, we will be glad to hear from you upon both bills.

STATEMENT OF HON. ASHLEY M. GOULD, ASSOCIATE JUSTICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Justice GOULD. Mr. Chairman and gentlemen, taking up first the longer bill, H. R. 6025, I merely wish to say that this bill has been very carefully considered by the judges of the Supreme Court of the District of Columbia on a number of occasions; and it is, as I understand, a duplicate of a bill that has already been introduced at least once before and failed of passing, or, at any rate, has not been reached for passage.

And I am speaking in the absence of the chief justice, who is abroad, in saying that all the judges have concurred in the wisdom of adopting this amended bill.

Mr. VOLSTEAD. Will you indicate to us, in a general way, where the changes come in?

Justice GOULD. It is some time since we have considered this measure. One of the radical changes is in our method of drawing jurors. We have now three officials who furnish the names to go to the jury box, who are not paid for that service, and who have other duties; and without wishing to reflect on them at all, the fact is that we have very great difficulty in getting satisfactory jurymen. This bill creates a jury commission of three men, to be appointed by the court, as I remember, who are paid a per diem of $10 a piece, their services not to exceed five or six days in any month; and whose duty is, as described with particularity in the bill, to keep the jury box full of eligible names of jurors. Their duties are circumscribed with great care in the bill, to preserve the integrity of the juries; and I think it is a very wise thing.

We have a very peculiar situation here in this District, as you probably all well know. The great bulk of the population of the District which would be eligible for jury service is exempted by reason of being employed in the Government service, so that we have a relatively small body of men to draw from for our jurors. And the difficulty of keeping what we call live names in—that is, men who are competent and willing to serve—has been great for a number of years, and will now naturally be greater, when the wages of those who are our usual jurors—men in the trades and in the different mercantile occupations here—are raised so high that it is a great sacrifice for them to serve on juries. Of course, that is not a legal excuse; but it is a matter that the courts have to consider in picking our jurors.

That feature of the bill, I should think, is as important as any that is in it; and I have never heard any objection on the part of any one to this method of selecting the jurors.

There are so many changes made in the code by the bill, which changes result from experience in the actual working of the code during the last 19 or 20 years—I think it was passed in 1901?

Mr. CHAPIN BROWN. Yes.

Justice GOULD (continuing). It went into effect in 1901; and these changes proposed in the bill are the result of experience in practicing and administering the law under the code. It would take quite a time to go over this bill section by section and show the changes that have been made; it would be necessary to take the code as it now stands and institute comparisons between the proposed amendments and the sections as they are now written.

Mr. WEBB. That recalls to my mind that three or four years ago Mr. Volstead, Mr. Dyer, and I had a bill similar to this bill which you have now, and the present law, printed in parallel columns in a great, big, open book.

Justice GOULD. Yes.

Mr. WEBB. From which you could see at a glance the difference between the two. I do not know whether Mr. Volstead has that now or not, but if so it would be very valuable to us.

Justice GOULD. Yes; it would be of great assistance in seeing just what the amendments are.

Mr. WEBB. You could see at a glance just what the present law is, and what the proposed law is.

Justice GOULD. And I could not begin to remember all the changes proposed.

Mr. WEBB. No; there are hundreds of changes; some are more or less immaterial, some are more important, and some are of very great importance.

Justice GOULD. Yes.

Mr. WEBB. If we could find a copy of that pamphlet containing the law and the proposed amendments——

Mr. VOLSTEAD (interposing). I think we can.

Mr. WEBB (continuing). And submit it to the court and let the judges and the bar association examine it and have the judges of the court write us a letter giving their views on the various amendments, I think it would be very helpful to the committee. That is where we ran aground a number of years ago when we had a similar bill before us. We sat for weeks and weeks at a time, and finally reported a bill with the amendments, but somehow the committee never got it out.

Justice GOULD. I think consideration of this bill was begun at least five years ago, and I remember now that you had a copy printed in parallel columns that was very useful.

Mr. WEBB. Yes; I think we can find that.

Mr. VOLSTEAD. I have a copy here; one has just been brought me.

Mr. GOODYKOONTZ. Has your bar association here taken cognizance of the matter and acted on it?

Justice GOULD. The bill was originally presented by the bar association and reported to the court by a committee of the association.

Mr. WEBB. Yes; that committee representing the bar association and the judges of the court came before our committee and collaborated with us for weeks and weeks. I think the action of the bar association on it was practically unanimous.

Justice GOULD. After the committee of the bar association reported to the court we spent days—that is, parts of days—for some time going over their report and making changes, which changes were all accepted and agreed to by the committee, as I now recall the matter.

Mr. WEBB. Mr. Carlin might have the amendments that the committee agreed to at that time; I do not know. Anyhow, I think it would be a good idea to proceed as I have suggested, if Judge Gould would undertake it, so that we would not have to sit here and hold hearings again as to why each change is made.

For instance, here is section 20 of the code which it is proposed to amend; we could get the views of the judges of the court as to the reasons for that in writing. I think that would be very helpful. Do you not think so, Mr. Chairman?

Justice GOULD. That book printed in parallel columns would be very valuable in that connection.

Mr. WEBB. Yes.

Mr. DYER. This bill that we have before us, which Mr. Volstead introduced, is the bill which was originally sent down by Mr. Chief Justice McCoy, is it not, Mr. Volstead?

Mr. VOLSTEAD. Yes; he asked me to introduce it, and I introduced it.

Mr. DYER. I take it that the judges had gone over it very carefully?

Justice GOULD. Yes.

Mr. VOLSTEAD. This in a measure changes the old common-law rules, so that an action at law and one in equity may practically be merged, does it not?

Justice GOULD. Yes; or sent from one court to the other.

Mr. VOLSTEAD. Sent from one court to the other without being thrown out of court?

Justice GOULD. That is section 1535–b in this bill. Of course, that is a part of the Federal Civil Code now anyhow, and we put it in this bill as a matter of applying that to our local courts.

Mr. VOLSTEAD. Does it make any change in existing law; you say it is part of the——

Justice GOULD (interposing). Part of the Federal Civil Code.

Mr. VOLSTEAD. Yes.

Justice GOULD. It is a fact that the difference between actions at law and suits in equity was practically abolished, in the sense that you can begin an action at law and go into equity without having to file an additional bill and vice versa. And then section 1535–c in this bill permits equitable defenses, as the Federal Civil Code does.

Section 1535–d is an instance of an amendment the propriety of which nobody would question. If you lost a promissory note in this District you would have to file a bill in equity to recover that note, the same as under the old equity procedure. This section would allow a suit to be brought at law, upon a lost promissory note, by filing a similar bond to that which would be required in a proceeding in equity. If this provision is not adopted, and a man lost his promissory note and had to sue on it, he would have to file a bill in equity.

Mr. WEBB. It is a strange thing to me that the old difference between law and equity has not been abolished long ago. I never could understand. I never could understand a man coming into court in a matter involving a narrow question between law and equity,

and being thrown out of court because he brought it in the wrong way. I do not see why you could not bring one suit and have everything settled in that.

Justice GOULD. That is due, of course, to our traditions; we have always been averse to making changes in our system. But that provision is favored by the judges of the courts here.

Mr. WEBB. Yes; nearly all of the States have abolished those old rules.

Justice GOULD. Yes; a few States retain them.

Mr. DYER. I have here a letter sent to the chairman of the committee by Mr. Chief Justice McCoy; it was written by Mr. Hoehling. He says:

> The bill in the form inclosed covers matters heretofore considered and approved by the committee, heretofore appointed by the court and by the bar association, and also contains all changes and additions suggested by the House Judiciary Committee at the hearing had before that committee on May 5, 1916, with the exception only of the suggestion offered by some member of the House committee that there should be a first-year's allowance made to the widow for her support—this in connection with proposed sections 374 and 377——

Mr. WEBB. When was that letter written?

Mr. DYER. June 3, 1919.

Mr. WEBB. Evidently, then, he has included it in the bill that Mr. Volstead has now introduced.

Mr. DYER. He has included in the bill all of those, with one exception, as to the allowance to the widow. This letter was transmitted to the chairman of the committee, Mr. Volstead, by Chief Justice McCoy, with the copy of the bill which Mr. Volstead introduced.

Mr. VOLSTEAD. This is the bill, I understand, as it was amended by the committee.

Mr. WEBB. I see. That makes it very much easier, then.

Mr. DYER. So that probably the bill in its present form is what it ought to be?

Justice GOULD. That is the opinion of the court.

Mr. DYER. And should be passed, I take it, as soon as possible?

Justice GOULD. There is nothing radical, as I say, in the bill in the way of change, except where it adds to the efficiency of the present law. I never have heard any objection by any person to the bill as it stands. Of course, when you start in to amend a code, you can get many suggestions that are not adopted in this bill; but I never heard anybody object to anything that is in the bill.

Mr. DYER. Mr. Justice Gould, we would like it very much if you would give us your views touching H. R. 4471, which proposes "to enlarge the jurisdiction of the municipal court of the District of Columbia, and to regulate appeals from the judgment of said court, and for other purposes."

Justice GOULD. I have read that bill also with care, and it has been considered by the other judges, and we favor the bill as it stands. I think that the court would not object to an increase of the jurisdiction of the municipal court. In this bill it is limited to $500, which is the present limit, in which it is given exclusive jurisdiction, thus relieving the Supreme Court of the District of a great many petty cases.

Mr. DYER. Is that the present jurisdiction?

Justice GOULD. Yes, but it is not exclusive. Any case can be brought up on certiorari for any reason whatever, without giving bond.

Mr. WEBB. Well, you can not originate a suit for less than $500 in the Supreme Court now, can you?

Justice GOULD. Yes, you can.

Mr. WEBB. It is concurrent, then?

Justice GOULD. Yes, it is concurrent over $100.

This would relieve the supreme court of a large number of comparatively small cases, by giving the muncipal court exclusive jurisdiction, with the right of appeal to the court of appeals directly in any case involving more than $100, and with the power to a party who desires a review by the court of appeals in an amount under $100 to get that review if the court of appeals, on petition, grants a special appeal.

The present method by which ordinary law cases come from the muncipal court to our court is extremely unhappy and unfortunate, from my standpoint. It is true that when a man is sued in the municipal court, he can, by simply filing an affidavit in which he states that his petition is not filed for delay—which, of course, is a mere figure of speech—bring his case into the supreme court of the District, and there it will remain probably a year——

Judge AUKUM (interposing). Sometimes two years.

Justice GOULD (continuing). And sometimes two years, before it comes to trial; and he gives no bond on certiorari on removal of the case from the muncipal court. So that it just operates——

Mr. WEBB (interposing). As a denial of justice, and a stagnation of our docket in the supreme court.

This bill takes away the power to remove by certiorari in all cases, and gives exclusive jurisdiction to the municipal court in the cases I have cited, with appeal to the court of appeals in amounts over $100.

In addition to that, of course, the bill has to provide for trial by jury, if either party requests it, in all cases involving over $20, to comply with the Constitution. So that there is a provision in the bill that one of the muncipal judges shall have a jury; and if either party requests a jury trial, as I say, in any case he may have it, thus preventing any constitutional objections to the jurisdiction.

Machinery is provided for obtaining a jury for the muncipal court.

If I were to make a radical change in the bill, I would increase the exclusive jurisdiction of the municipal court.

Mr. WEBB. To what—to $1,000?

Justice GOULD. To at least $1,000, because there you would have a jury; the court is made a court of record—which it is not now—and they would have a seal; and it seems to me that, with the appeal to the court of appeals, the muncipal court might be given exclusive jurisdiction of at least $1,000. And of course, that would relieve the supreme court, whose dockets are congested now, to a much greater extent.

Mr. WEBB. Have you any idea as to the proportion of cases that are appealed from the muncipal court to the supreme court—the proportion of cases, I mean, on your docket that are cases appealed from the muncipal court?

Justice GOULD. A large number.

Mr. WEBB. Would it be necessary to have a jury for each one of the five judges?

Justice GOULD. The bill provides for only one.

Judge AUKAM. No; the bill does not say how many.

Mr. BROWN. That bill as drawn allows only one jury.

Justice GOULD. Yes; that is the way I read it.

Mr. DYER. What section is that—section 5?

Justice GOULD. Section 5 provides that "the case may be tried and determined by any member of the court." That is, where there is no jury trial. Any judge can preside over a jury trial, but there is only one jury.

Judge AUKAM. In the police court they have the same provision of law at this time. They are permitted a jury trial upon request, but they waive it, I suppose, in 85 or 90 per cent of the cases.

Mr. GOODYKOONTZ. How would you determine which member of the court would try the case?

Judge AUKAM. That is arranged among the members of the court down there. We divide the cases equally, and if one judge is sick the other judges take on his work. That would be applied in jury cases also.

Mr. VOLSTEAD. Might it not be necessary to provide for more than one jury?

Judge AUKAM. I think not.

Mr. WEBB. I do not see why, under this bill, each judge should not have a jury. Suppose each judge had a case one morning, and in each case a jury should be demanded. It seems to me that the difference between having it transferred to another judge and having five different juries would be considerable.

Judge AUKAM. I do not think it would be necessary.

Mr. WEBB. It would break into the business of a good many citizens here.

Mr. BROWN. There is only one jury allowed in this bill.

Mr. WEBB. You think that is all it provides?

STATEMENT OF MR. CHAPIN BROWN, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. BROWN. We went over this quite carefully in the chamber of commerce, and we arrived at that conclusion—that there is only provision for one jury in the municipal court in this bill.

I want to say that the chamber of commerce have some suggestions they would like to make. They think the jurisdiction should be higher than $500, and I would like to present their views. I have a resolution of the chamber of commerce on that matter.

Mr GOODYKOONTZ That section 5 does not apply to jury trial at all; it is where neither party demands a trial by jury

Justice GOULD. Section 3 provides for jury trial.

Mr. DYER. That probably ought to be amended, Mr. Brown, so as to make it very plain that only one judge is to try jury cases.

Mr. BROWN. Well, I want to say this, that we are satisfied—I do not want to interrupt you, Judge Gould, but the chamber of commerce originated the municipal court, I might say. They drew

up the bill that changed the justices of the peace to the municipal court. I drew that bill originally, and it was indorsed by the chamber of commerce; and then Mr. Campbell of Kansas championed it and put it through. It was carefully considered. The House committee had several meetings on it. Of course, it was new legislation, but finally it was passed, with some few amendments.

Now, the chamber of commerce have carefully considered this bill, and they have made their recommendation in this resolution. It was considered first by the committee on law and legislation, of which A. Leftwich Sinclair, who was formerly the president of the chamber, and also at one time assistant corporation counsel, is chairman; it was then considered by the board of directors and the board of directors indorsed the report of the committee on law and legislation, which is as follows. This was passed on July 3.

Resolved by the committee on law and legislation of the Washington Chamber of Commerce:

That it is the sense of this committee that the Code of Law of the District of Columbia should be amended so as to increase the jurisdiction of the municipal court of the District of Columbia from $500 to $3,000, in that class of cases over which said court now has jurisdiction, and making the jurisdiction of said court exclusive in all cases where the amount involved does not exceed $500, and concurrent with that of the Supreme Court of the District of Columbia in cases where the amount involved exceeds $500 and does not exceed $3,000.

That gives the right to each litigant, where the amount involved is over $500, to elect to bring his case either in the Supreme Court of the District of Columbia or in the municipal court.

The bill that was considered by the committee, a draft of which I have here—but I will read the further action of the committee first:

Resolved, That it is the sense of this committee that the Code of Law of the District of Columbia should be further amended so as to provide for juries in said municipal court in cases where the amount involved exceeds $20.

That is the constitutional provision, and we would strike that out if we had the power under the provisions of the Constitution.

The bill as it was drafted by the committee of the chamber of commerce, which is practically the same as this bill, making changes only where the jurisdiction of $3,000 would necessitate it, provides, in effect, that until the docket of the Supreme Court of the District of Columbia is caught up, the judge holding the common law court can have power, on the motion of either party, to certify those cases that have been on the docket now for a year or two years, and sometimes, by continuances, for three or four years, over to the municipal court.

If that power is given, and we are very strongly of the opinion that it ought to be given in order to clear up that docket—after it is cleared, the litigant can elect to bring his case either in the supreme court or in the municipal court. The chances are that they will bring their cases in the municipal court, because if you give two jury trials down there they can get a trial in from two to four months, and as it is now, with the crowded condition, and the United States business and the large amount of litigation that the supreme ocurt has, they can not get one in less than than one or two years. It is sometimes said that the justices of the supreme court

do not work; but they work the lawyers to death when they get down there grinding out cases; and they do all that any judge can do and do it satisfactorily, I think.

Mr. YATES. I did not hear that; will you repeat that statement?

Mr. BROWN. I say it is often charged that we ought not to have additional judges in the supreme court, because the judges ought to work harder. Now, I say that in this jurisdiction the judges work as hard, if not harder, than they do in the State courts, and I know that they work harder than they do in United States courts where they have a large territory. And I have practiced law here constantly for 42 years, and have had a pretty good chance to observe. And to give the proper care to cases, they could not try them any faster than they do.

Mr. WEBB. The Attorney General's report showed, Mr. Brown, that they disposed of twice as many cases per judge as any other court in the United States.

Mr. BROWN. Well, I did not know anything about that; I am only speaking from experience.

Mr. YATES. Does the record show how many there are?

Justice GOULD. There are six judges in the supreme court, five in the municipal court, and two in the police court.

Mr. WEBB. Do you mean how many cases?

Mr. YATES. Yes.

Mr. BROWN. I do not know. But Judge Gould can tell you that the lawyers give in the briefs that are prepared there as much aid as is given in any jurisdiction, and with all that they can not keep up.

Mr. YATES. How far behind are they?

Mr. BROWN. Two years. If you were to bring a suit for $101 in the supreme court, I doubt if you would get a trial for two years.

Mr. YATES. I heard that was true of the probate court.

Mr. BROWN. No; the probate court is practically up to date; but I am speaking from actual experience when I say that I do not believe you would get a trial for two years. If you bring a suit now it would get on the assignment for next October, and I doubt whether it would be reached the following winter. It is becoming more crowded all the time.

And so I think on the question of jurisdiction, if it is a question of practice, the court and the bar are better capable of judging what is the best kind of legislation, but as to the trial of the cases and how to get them tried, the citizens ought to be the ones to determine that.

And the chamber of commerce, consisting of 900 business men; after careful consideration, being the father, too, of the original bill, says that there is no use in making any makeshifts, but give the municipal court jurisdiction up to $3,000 and the supreme court will still be crowded, and they ought to have all the time to give to the important cases in which the Government is involved, and they ought not to be limited as to the time. And I have no doubt that if you put it to $3,000, it will be so satisfactory that they will come here, and the judges of the supreme court will come here and say, "Increase it to $5,000, in order to relieve us so that we can consider these important cases," just as we are coming here now to ask to have the jurisdiction of the municipal court, that was established at the instance of the business men, increased to $3,000.

Mr. DYER. If Congress did that, would it relieve the work of the supreme court sufficiently so as not to necessitate the appointment of additional judges?

Mr. BROWN. No, I think not; no, sir. They will need those two judges; they ought to be appointed right now. They would need them even with this change. This will only relieve the court that will try the common-law cases; it does not relieve the equity court, or the probate court, or the court of appeals in any way—the court of appeals is all right—it is up to date. But this would relieve only the two judges that are trying common-law cases—cases of debt and cases of replevin, etc.

Mr. WEBB. Those do not seem to amount to over 250 or 300 a year?

Mr. BROWN. Oh, yes, they do; because those are appeals that they are taking from the municipal court. But you must remember that they have the right to bring the case originally in the Supreme Court of the District of Columbia where the amount is over $100.

Mr. WEBB. Then, in your opinion, what would be the proportion of cases pending on the supreme court docket that would be removed from that docket if we enlarged this jurisdiction of the municipal court to $1,500 or $3,000?

Mr. BROWN. I doubt whether, with the increased business, you would relieve the supreme court at all if you make it $1,500. But if you will put it at $3,000, and give them power, as in this bill, to certify the cases over to the municipal court, you will then relieve the supreme court; but if you put it at $1,500, I do not believe you will. The Supreme Court of the District of Columbia is an important court. They have more cases involving the United States Government than any other court; and they ought to have the time to attend to that kind of business. This little business of suing for damages against a railroad, or for a debt between private parties, is a matter that can be tried by the municipal court; and it is too small a business for the dignified Supreme Court of the District of Columbia.

Mr. YATES. Would you make their decision final?

Mr. BROWN. I would make their decision final, with the right of appeal according to the course of the common law, where the amount is over $100, to the Court of Appeals of the District of Columbia.

Mr. YATES. Does an appeal lie now?

Mr. BROWN. No; you get a new trial.

Mr. YATES. Does an appeal lie now from the decision of the municipal court to the Supreme Court of the District of Columbia?

Mr. BROWN. Yes; it is a new trial.

Mr. YATES. No matter what the amount?

Mr. BROWN. Yes—I do not remember the exact amount.

Judge AUKAM. Any amount over $5.

Mr. BROWN. It is a relic of barbarism; and you have got to be bold, and say that you are going to change this justice of the peace court into a real bona fide court. This bill makes it a court of record. It does not make the judgments there a lien on real estate. That is a wise provision. They can certify them to the Supreme Court of the District of Columbia, and then they will be a lien on real estate.

I can say that the committee has considered this bill carefully. I have considered it in the light of my long experience

before the bar; and I drew up the original bill, as Judge Aukam knows. And the citizens have indorsed this bill; that is shown by the approval of the 900 members of the chamber of commerce, who are the business men of this town. They say that the jurisdiction ought to be increased to $3,000.

And even then, if you do not appoint two additional judges of the Supreme Court of the District of Columbia, they will still be behind.

I am a Republican, and this is a Democratic administration; but I am in favor of the appointment right now of those judges, in order to relieve litigation in the Supreme Court of the District of Columbia.

Mr. YATES. Well, what was done?

Mr. BROWN. The bill did not pass.

Mr. WEBB. The bill passed the House twice, and has passed the Senate once or twice, and it died in conference because the Senate stuck on an amendment which our committee would not agree to; it passed the House, and it passed the Senate; and that is how it died.

Mr. BROWN. I would like to file these suggested amendments to the bill.

Mr. VOLSTEAD. Is that your bill?

Mr. BROWN. Yes.

Mr. DYER. The one that you want to file—is that different from the printed bill, H. R. 4471?

Mr. BROWN. It is different, because when I came to draft the amendments suggested by the committee on law and legislation of the chamber of commerce, I found that it was easier and would make it more intelligible to draft a new bill, rather than to say that such-and-such a provision be amended. But it has the same scope as that bill, and the language, where it is not necessary to be amended, is the same.

Mr. DYER. Well, does the draft that you hold in your hand make plain the question of juries?

Mr. BROWN. It changes the word from "jury" to "juries"; and they use the word "judge," which would indicate that there was only one trial jury; and it changes the word "judge" to the plural, "judges."

Mr. WEBB. No; that language in the bill would only indicate that one judge was trying the case; that would not limit it to one jury.

Mr. BROWN. If I was drafting the legislation, I would not limit it to even two juries. The citizens want to have a trial of those cases, and if it was convenient for them to have three juries for the purpose of clearing up this docket, I would not limit them. We are perfectly well satisfied with the assignment that has always been made by the municipal court judges. They assign one class of cases, for instance, landlord and tenant cases, to one judge. And we are always satisfied; we know where to go.

Mr. WEBB. Why not have the chief judge have a jury, and he could in cases of necessity call another jury? I think it would be unwise to have five juries.

Mr. BROWN. Well, they would not have five.

Mr. WEBB. But you say you think each judge should have one.

it before the judge for trial. Why? Because you can have a trial that very day or the next morning; and it gives a chance for a fairer trial than if you had to wait for a year; and unless you go to trial on that cold affidavit, without an examination of the party making it, very often injustice is done to the defendant. So that it can, under the power that is given to it to make rules, have a rule that you shall swear to your case beforehand, and unless it is a good defense it will adopt, in a modified way, the practice of the Supreme Court of the District of Columbia.

But as to the right to demand a jury trial, the fact that you have to demand a jury trial in writing will cut out 25 per cent of the cases, I believe.

There was a question that I was going to answer, asked by Mr. Volstead. I do not remember just what it was.

Mr. VOLSTEAD. You answered it. The question was whether the bill was broad enough to permit the municipal court to try forcible entry and detainer cases and cases of failure to pay rent when the leases are canceled for that reason?

Mr. BROWN. I want to say this, that while the Constitution requires that they be tried by jury, we have in the Supreme Court of the District an ironclad rule, known as rule 19, applying to those municipal court cases of landloard and tenant, that enables the landlord to file his affidavit, and the defendant has to set up facts which would entitle him to have them determined before a jury in order to get a jury trial.

I think 75 per cent of those cases are tried on that affidavit under rule 19; so that they do not go to a jury. Now, they would have a similar rule in the municipal court, under the power——

Mr. VOLSTEAD (interposing). Suppose a rule of that kind was in force in a landlord and tenant case, and the tenant set up an equitable defense; could he set it up in the municipal court?

Mr. BROWN. Yes, I think so. I think that the law amending the Judicial Code would apply to this court after it is made a court of record; but in addition to that, the code does provide that it shall be tried according to the right and equity of the matter. So that they consider equitable defenses in the municipal court, and they would in a landlord and tenant case.

Mr. WEBB. Do you think this bill, H. R. 4471, would cover the landlord and tenant cases, where it says—

> When the amount claimed for debt or damages, or the value of personal property claimed, or the value of personal property and damages claimed, does not exceed $500, exclusive of interest and costs?

Do you think that would cover a suit for possession of a tenement?

Mr. BROWN. I think it is vague; it could be amended.

Mr. WEBB. There is no reason, is there, why such a case should not be tried by the municipal court?

Mr. BROWN. No.

Mr. YATES. What section is that?

Mr. WEBB. Section 1.

Mr. BROWN. Mr. Chairman, may I submit this for the record?

Mr. DYER. We will be glad to have it. I think probably you had better retain your draft of the bill and make clear those two suggestions that Mr. Volstead and Mr. Webb have offered with reference

to making it plain as to the jurisdiction of the court in landloard cases, and also as to how many juries there shall be. If you need juries in two of the courts, you should make that clear, or give authority to the chief judge and let him call for a jury whenever it is needed.

Mr. BROWN. It could be done by a majority of the judges; they do not have any chief judge.

Mr. DYER. You have a chief judge, do you not?

Mr. BROWN. No.

Mr. DYER. I thought Judge Aukum was chief judge?

Mr. BROWN. No. And they have never had any quarrels or disagreements

Judge AUKUM. I was simply elected by the judges, that is all.

Mr. GOODYKOONTZ. It is rather complicated machinery for a great city to have five judges of equal dignity; but if they have been able to get along harmoniously so far, we could doubtless trust them to go ahead harmoniously hereafter.

Mr. BROWN. That is right.

Mr. YATES. You do not desire a chief justice of the municipal court?

Mr. BROWN. No; and I do not think they desire it either; it works so well as it is that it does not seem necessary.

Mr. VOLSTEAD. I have just read this section 1, and it seems to me that it would be quite a question as to whether this authorizes a suit at all for possession of real estate.

Mr. BROWN. Well, it does not change the provisions of the code now in force.

Justice GOULD. It is already provided for in the general code.

Mr. BROWN. And the code allows that to be done. So that is the advantage of not trying to draft a new bill. This is only an amendment to the code, leaving all the other provisions of the code in force, except where they are changed here; and there is a provision of the code for the trial of those cases in the municipal court.

Justice GOULD. In the title the bill (H. R. 4471) reads, "To enlarge the jurisdiction of the municipal court," etc.

Mr. BROWN. I know this: I drew a bill that was some 40 or 50 pages long—the original bill to create the municipal court. I knew it would confuse the members that were not familiar with our present code; and so the code was simply amended—section so-and-so of the code was amended. And that was the wise thing to do.

Mr. WEBB. Section 10 of this bill that we are now considering provides that "Section 1109 of the Code of Law for the District of Columbia shall not apply to said municipal court." What is that section 1109?

Justice GOULD. That section, I think, empowers the Supreme Court of the District of Columbia to make rules for the municipal court, and that is changed by section 10 of this bill, so that they would make their own rules.

Mr. BROWN. I will leave a copy of this bill now, Mr. Chairman, with the committee. I have retained a copy of it, and I will draw an amendment to cover your suggestion.

I would also like to leave the letter of the Chamber of Commerce that shows that they indorsed the measure.

Mr. BOIES. Let me ask this question before you go: I do not find that there is anything in the Constitution which requires a specific number of grand jurors.

Mr. BROWN. No; there is not.

Justice GOULD. No.

Mr. BOIES. Why do you want 23 of them then?

Justice GOULD. The only answer I can give is that it has been usual for over 100 years to have 23; it is the old common law; you could not have "any number less than 23"; that was the old common-law practice, and we have always retained it.

Mr. BROWN. I will say this, that the duties of the grand jury are not so onerous as the duties of the petit jury, and there is not any objection on the part of citizens to serving on the grand jury; they can get off more easily.

Mr. BOIES. There is no use of going to the expense of having 23 grand jurors in any court in this country.

Mr. BROWN. Well, I will say in answer to that that I believe, where you have star-chamber proceedings, as the grand jury is, it is safer to have a larger number than 6 or 7. And there is no complaint on the part of the citizens here about that. I think they would rather pay, as they are paying the expenses of all this litigation, the expense of 23 grand jurors than to have a change made. I never heard any objection to having that number on the grand jury. A man never objects to serving on the grand jury; he will object to serving on a petit jury, because he is likely to be shut up in a case when he may have important business. And the grand jurors are public guardians, to a certain extent, under the direction of the court.

Mr. BOIES. A lesser number has proven to give entire satisfaction in the States.

Justice GOULD. Many of the States have abolished the grand jury entirely, especially among the Western States. We can not do that under the Constitution; that prevents us from doing that here.

STATEMENT OF MR. JOHN H. ADRIAANS, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. ADRIAANS. The bill, 4471, now claiming the attention of the committee, is a copy of Senate bill 205, introduced by Senator Walsh, of Montana.

I have made some careful study of this bill, S. 205, which is an exact copy of the bill H. R. 4471, and have prepared a number of amendments which, to my mind, are worthy of consideration by the committee; and in order that these amendments might not encumber this bill too much I have prepared a substitute bill, No. 8263, which has been introduced by Mr. Morgan of Alabama——

Mr. DYER (interposing). Of Oklahoma.

Mr. ADRIAANS. I beg your pardon—of Oklahoma. That bill contains all of these suggestions; but unfortunately, that bill was referred to the Committee on the District of Columbia and is now in process of being shifted to this committee. And I earnestly hope that this committee will take up the consideration of that bill in connection with this bill, to see which of the two is preferable.

To my mind, all of the objections that can be urged against the bill H. R. 4471 and the Senate bill 205, are cured by the bill H. R.

8263. And in that same connection I would suggest that the bill H. R. 6025, introduced by Mr. Volstead, depends to more or less extent upon the action of this committee in indorsing either 4471 or 8263.

So that it is important that the committee should take into consideration the whole field, the whole scope of the subject, and by comparison ascertain which one of these bills is more meritorious.

I claim that the bill H. R. 8263 is far more meritorious and far more worthy of adoption than the bill 4471, and I claim that section 3 leaves in my mind no doubt whatever as to the interpretation of it—that it means that any one of those five judges who has a case assigned to him, when there was a demand made for a jury trial he can impanel a jury, and the consequence is that I should infer from the bill 4471 that it was the intention of the framers of that bill to have each one of those five parts of the municipal court provided with a jury, and the consequence would be that there would be 60 men in attendance upon panels in five branches of the court. Of course, each court would have another panel, and there would be 120 men taken away from our body of citizens to attend upon that court, when there would be very little need for them.

I want to say to you that there is mighty little need for a jury in the municipal court, and I concur with Mr. Brown on that question.

In the first place, in the L. and T. cases—the landlord and tenant cases—there is never any jury trial. It is only a question of whether or not the plaintiff is entitled to judgment for possession for default in the payment of rent, and it is not a question that is referred to a jury.

Then, all the cases that come under the sixteenth rule of the municipal court, which is based upon the seventy-third rule of the upper court, in those cases there is no call for a jury, because they are disposed of by the plaintiff filing an affidavit in the court; and the effect of that rule is to give summary judgment without any trial at all, and unless the defendant brings in an affidavit, as Mr. Brown has very properly told you, swearing to the defendant's defense, he gets no trial at all.

So that in those two classes of cases there is no call for any jury.

I think there ought to be a chief judge of the municipal court just the same as there is a chief judge of the Supreme Court of the District, and whether he is appointed by the President as chief justice or whether he is selected by his colleagues by rule of seniority makes very little difference to me, but I would say that by the rule of seniority the senior judge might be selected by the general term of the municipal court to be the chief judge, and that he should preside over the jury trials, and that no other judge should have any jury trials, and that whenever there is a demand for a jury trial in one of the other parts that case should be referred to the chief judge. Bill H R. 8263 so provides and leaves it in no doubt whatever that the chief judge should preside over the jury trials. So I think when you come to study the two bills you will find that all of the objections which have been urged against this bill, in construing this bill, 4471, you will find that all of these objections are answered in the bill 8263.

Mr. DYER. If you have a copy of that bill, I wish you would give me one.

Mr. ADRIAANS. Yes, sir. In addition to that, if you desire, I will indicate what changes I would make in the present bill.

Mr. DYER. Your bill, 8263, you say, sets this out. I would not think it would be necessary.

Mr. ADRIAANS. Yes, sir.

Mr. DYER. We have Judge Aukam of the municipal court present. We will be glad to hear from you, Judge.

STATEMENT OF HON. GEORGE C. AUKAM, JUDGE OF THE MUNICIPAL COURT, DISTRICT OF COLUMBIA.

Judge AUKAM. Mr. Brown has covered the situation thoroughly. If you wish to ask any questions, gentlemen, I will be glad to answer them. As to this one bill introduced by Mr. Adriaans, I might say that I am authorized by the members of the court to say that this is simply a copy of our original act and could not be possibly applied at this time. For instance, it refers to $1,800 here for rental. We are paying, I think, $3,600 now, and at the house we are located now, the property is four or five times as large as the old property we had before. It is simply a copy of the original bill.

Mr. DYER. You are referring to H. R. 8263?

Judge AUKAM. H. R. 8263; it is not possible to adopt it now, in our opinion; it is absolutely useless.

Mr. DYER. Why?

Judge AUKAM. It is simply a copy of the original bill with a few minor changes. Its principal object, as I take it, is to displace the present clerk, Miss Neff, who has been in the service of the court ever since its organization and has had wide experience. There is a provision in there which would remove her from office because she happens to be a woman, I think. I think it will require the reappointment of all the judges, for some reason.

Mr. DYER. Bill H. R. 4471, you have gone over that, have you?

Judge AUKAM. Yes, that is gone over by the committee of the Bar Association and passed upon by the Supreme Court of the District, the members of the bench.

Mr. DYER. Do you think it should be amended so as to make it certain that it covers the landlord-and-tennant cases?

Judge AUKAM. That is all provided for in the act; it has practically exclusive jurisdiction.

Justice GOULD. They would have to originate in that court.

Mr. WEBB. On that point, does this section 1 give you the right of trial by jury in these cases?

Judge AUKAM. I am in doubt on that.

Justice GOULD. I do not think it does.

Judge AUKAM. As to the necessity for that there is no question, in my opinion. It is true, as Mr. Adriaans says, that we have never had any jury trials in the landlord and tenant cases, and that is true in other cases; we have never had any provision. They have all been carried over into the Supreme Court of the District and

that is the reason we have not had any jury trials. Do you agree with me, Judge Gould, that they may be entitled to a jury?

Justice GOULD. I should have some question where they were asking possession. The Constitution says where the amount involved is $20 or over, I think. In possession, you could hardly fix the value, because the court itself has no right to try the title of real estate.

Mr. VOLSTEAD. Why should it not be given the right to try the title where the value of the property is less than $3,000, or some particular sum. I am just looking at the justice of the peace provision, and I presume that it is one that applies to the municipal court. It excepts the title to real estate and damages for assault and battery and for malicious prosecutions or actions against justices of the peace or other officers for official misconduct, or actions for slander or libel, or action for promises to marry, etc. That is the matter enumerated. Make it a court of record. Why should not the municipal court be permitted to try some of these cases?

Justice GOULD. I think it should, especially these assault cases where the amount recovered is never very large. In the upper court they come for a larger amount but the recovery is always small.

Mr. VOLSTEAD. And there is real-estate property that does not amount to a great deal in value. These judges, no doubt, will have their jurisdiction increased, pay increased, and it seems to me that the supreme court will have enough to try, anyway, and we might as well enlarge that jurisdiction so as to give them the ordinary jurisdiction of minor cases, covering both real estate and these other classes of damage cases.

Mr. BOIES. I do not think the title to real estate ought to be tried in a municipal court.

Mr. VOLSTEAD. We are paying these men $3,600 and giving them a jury. Why could they not try that title as well as they try title to personal property that may amount to equally as much? I do not know how complicated real-estate titles are in this district.

Justice GOULD. They are very complicated, the old titles especially.

Mr. VOLSTEAD. Our western State real-estate titles are as a rule just as simple as the titles to personal property.

Mr. BOIES. We do not file them in a justice court.

Mr. VOLSTEAD. You are going to enlarge their jurisdiction to $3,000, furnish a jury, giving them, it seems to me, practically the same jurisdiction as your district courts or circuit courts in Iowa. Judges there get less, I think, than is provided here. The district courts. in my own State, try all those questions.

Justice GOULD. You mean the district court?

Mr. VOLSTEAD. Yes; they get $4,200.

Justice GOULD. That is really our circuit court. The Supreme Court corresponds to your district court.

Mr. VOLSTEAD. That is true, but for the minor cases and involving small values, it seems to me it might be as well for them to be tried.

Mr. BROWN. That is a matter we have never considered, but it is so simple now, the practice. If you plead title in real estate it is certified to the Supreme Court of the District of Columbia.

Mr. WEBB. That is because it has been regarded as jurisdiction of that court; and you had no juries or record.

Mr. BROWN. You are seeking to elevate this court.

Mr. VOLSTEAD. We try to give you a jurisdiction so they can take over a good deal of that work.

Mr. BROWN. As Judge Gould says, the titles here are so intricate, and he can speak on authority because he was the head of a title company and he knows and I have not given it consideration. It is such an important step; that is the way I feel about it.

Mr. VOLSTEAD. If we have not got on this bench judges who can try them we ought to get judges who can try them, it seems to me.

Mr. DYER. What are the qualifications of the municipal judge?

Mr. BROWN. He has to be a member of the bar in good standing and a citizen of the District of Columbia for five years.

Mr. VOLSTEAD. The chances are they ought to be fully as well qualified to try the cases as men who come from the outside and never have heard anything about this.

Mr. BROWN. It is a new question; that is the only thing. I would not recommend one way or the other without giving it more consideration. It has worked pretty well so far.

Mr. VOLSTEAD. What objection would you have to these assault cases—assault and battery?

Justice GOULD. Libel and slander.

Mr. WEBB. Malicious prosecution.

Mr. VOLSTEAD. These are excluded, as I take it, now, under existlaw. It seems to me we ought to give that jurisdiction to the court.

Mr. BROWN. There is no question about that.

Justice GOULD. Last year in the Supreme Court of the District we tried 20 cases for libel, slander, and malicious prosecution and assault. I do not think there was recovery in any case of over $1,000. These are not difficult cases.

Mr. YATES. In a recent celebrated case the recovery was only 6 cents, but it was important.

Mr. VOLSTEAD. What about promise to marry? That is not a difficult case to try; just a question of damages where the amount as claimed would be comparatively small.

Mr. BOIES. They do not claim small damages.

Justice GOULD. In all these jury cases the lawyer who represents the plaintiff lays his addendum for any imaginary sum he can speak of.

Mr. GOODYKOONTZ. It is a matter of concern.

Mr. VOLSTEAD. Here is the situation to-day: The supreme court is so crowded you can not get a trial for two years. It is possible if we gave jurisdiction in those cases a number of them might be brought into the municipal court just for the purpose of having a chance to try it.

Justice GOULD. That is true.

Mr. VOLSTEAD. I can not see any reason why there should be that distinction between the two courts.

Mr. GOODYKOONTZ. Mr. Volstead, would you question the policy of running counter here to the proposition that is reenforced by the judges of the district court, the bar of the District, and the board of trade or chamber of commerce?

Mr. VOLSTEAD. It is a question of whether these men are not willing to consider the question. I am not urging it, but it seems to me that if we are adding a court of record with a view to taking care of such a congested situation, we must give to this municipal court a jurisdiction broad enough to relieve them. If we are simply going to nominally confer just the small jurisdiction upon these courts that they have now, you can not afford that relief.

Mr. BROWN. I am satisfied, individually, that that jurisdiction ought to be given in the municipal court of assault cases, breach of promise, and libel, and limit the amount up to $3,000; but as to the title, I think that is a very important question.

Mr. VOLSTEAD. Even in those cases you can appeal to the circuit court of appeals, and I do not see any good reason. Here is a little property worth, perhaps, $1,000, especially on the outskirts of the town where there are small tracts involved. Why should not that municipal court have the power to try them? It would simplify the jurisdictional question in many instances, too; where you have a line of cleavage, you are likely to have more or less technicalities.

Mr. DYER. Mr. Brown, would you be kind enough to give consideration to that?

Mr. BROWN. We will be very glad to and should appreciate the suggestion because we will try to thrash it out as local lawyers and local business men.

Mr. DYER. Do you think, Judge Gould, that that would be worthy of the committee's attention?

Justice GOULD. I do. I would increase the jurisdiction over $500 and make it exclusive to the supreme court, giving an appeal to the court of appeals. Just how much over $1,000, I never considered.

Mr. VOLSTEAD. I would make it exclusive up to $1,000.

Justice GOULD. Yes; with appeal to the court of appeals, keeping these cases away from the Supreme Court of the District.

Mr. VOLSTEAD. This makes it concurrent from $1,000 up higher.

Justice GOULD. Not to make it concurrent would give the three trials suggested here, as you have now. I have not read this bill of Mr. Brown's, but there is no use of a man having three bites at the case in three courts.

Mr. VOLSTEAD. I perfectly agree with you as to that, but suppose there was concurrent jurisdiction from $1,000 to $2,500 and $3,000, and exclusive jurisdiction to the municipal court below $1,000.

Mr. WEBB. And with appeal from the District court to the court of appeals.

Justice GOULD. Practically the same as we do now.

Mr. VOLSTEAD. That would not give them three bites.

Mr. YATES. I would like to make a general observation. I do not live in the city of Chicago, but in the city of Chicago they created a municipal court, the purpose of it, as I understand it, being to do away with the evils of the congested court practice, and I understand that in a general way it was a very great success, but the effort, as I understand, was to dignify the municipal court considerably and give it standing. I am a little hazy about what the jurisdiction was in some manner, but that is what you are seeking to do here in part,

at least, is it not? Are you elevating the dignity of the court? Are you also increasing the compensation of the judges?

Mr. DYER. $3,600.

Mr. VOLSTEAD. Making it a court of record; to receive $3,600.

Mr. BOIES. When you get to the passing of the title to real estate, the title is universally involved under the custom now, and when you go into court with the jurisdictional question as to the value you have that added question in your trial of the title to real estate.

Judge AUKAM. I have looked over 8263.

Mr. DYER. It is not pending before this committee, but before the Committee on the District of Columbia.

Judge AUKAM. That simply copies it. Here is a section as to the manner of depositing funds and the signature of the clerk. It provides that a male clerk must be appointed rather than a female clerk.

Mr. BROWN. The present clerk is very efficient.

Judge AUKAM. The whole bill is simply aimed at making particular changes, I think, and removing this particular woman from the office of clerk.

H. R. 8263, page 4, line 8. It is not before this committee. As to the jurors there, I simply want one jury or two, just enough to cover this business we are taking on, which is additional business, and the jurors would not be called until the case was ready for trial; and there is no cost to the Government. As I have said, there is over $100,000 surplus in the Treasury from the earnings of this court, although the fees have been less than $2—$1.60 and $1.35 in the average case.

Mr. BROWN. I want to say to you that the present accommodations are sufficient to have jury trials in the court. The building was prepared with the idea that we would have to have juries in that court. I was in that building for 38 years and moved out and had it fitted up for the municipal court, because it was the best building in the locality, and they wanted to be in that locality. I do not have any interest whatever except public interest; it is an inconvenience to myself. It has no money interest to me.

Mr. DYER. Mr. Brown, does the municipal court, all of its divisions, meet now in rented quarters?

Mr. BROWN. Rented quarters, $3,600 a year.

Mr. DYER. Has the chamber of commerce made any effort to bring to the attention of Congress the necessity of putting up a building for the municipal court?

Mr. BROWN. That is probably quite an important matter. I will say that the original place where they met became so crowded that they could not accommodate litigants at all, and at the request of the court and of the commissioners of the District of Columbia, I got Mr. Wilkins to fit that building up at an expense, and it was figured out it paid him about 10 per cent on his investment. He fitted that building up some three or four years ago. It is a building that could be rented for the same amount, probably, for office rooms, and perhaps at a larger amount. There was a tacit understanding with the court that they would occupy it for a sufficient number of years. It is a cheap rent and a very large, commodious building.

Mr. DYER. Where is it located?

Mr. BROWN. On John Marshall Place, right across from the Supreme Court of the District of Columbia, so that litigants going down

in that locality are right within the two courts. I have no interest whatever in the building, and I only did that for the public good.

Mr. DYER. What other municipal or district officers are in these headquarters—the recorder of deeds?

Mr. BROWN. The recorder of deeds—at the present time they have made a proposition for them to move back into the courthouse.

Justice GOULD. They did not go back; it did not go through.

Mr. BROWN. The Century Building, they call it, the office of the recorder of deeds.

Mr. VOLSTEAD. Would it not be a good idea, Mr. Chairman, to have Judge Gould and Mr. Brown here to consult with their people and with themselves, perhaps, as to just what jurisdiction ought to be given, and let us know what they desire in this particular respect. It seems to me, in view of the situation, we ought to broaden the jurisdiction of the court, because it seems there are a great many things that court could try just as well as the Supreme Court, and if they don't get a good trial there they will probably ask for another. We have a good many cases to try and they could get a trial within the next year or perhaps within the next few months.

Justice GOULD. I was going to suggest in regard to juries in the District Court that the bill might provide that a certain number, 30, could be drawn, out of which any judge could get a jury when needed by simply calling 12 men to serve. I have no idea that there would be a demand for over two juries by the five judges. I doubt if it would be more than one. If you had a certain number that any judge could draw on when he was asked to try a jury case, you could limit the number that way.

Mr. DYER. Will you do that, Mr. Brown; give us the draft of the bill, and just what jurisdiction the municipal court should have and these other corrections, and let us have it; and then we will take it up in the full committee as soon as possible and try and get it on the calendar.

Mr. BROWN. I will do that. I will consult with Judge Gould, representing the supreme court, and also with the chamber of commerce, that has considered this matter heretofore.

Mr. DYER. As far as the other bill is concerned, H. R. 6025, I do not think there ought to be any trouble in getting that up at an early date.

Justice GOULD. That contains the amendment made by the committee on the prior bill.

Mr. BOIES. Mr. Chairman, I would like to call your attention to line 3, page 11, H. R. 6025.

Mr. WEBB. What section is it?

Mr. BOIES. Section 198, with reference to jury commissions. The word "said" is used there and in many other places in the bill and ought to be eliminated. Why that is called to my mind, my old preceptor was annoyed with us on that word. It was the common law of Illinois. He said it would not be long before the people would be using the expression, "the said God."

Mr. GOODYKOONTZ. The said Supreme Court of the District of Columbia might be important there, because the Supreme Court is referred to in this bill.

Justice GOULD. The Supreme Court of the District of Columbia. There is another if we are correcting the verbal use of the words here. The word "obtaining" "shall have the same as now obtaining." I never enjoyed that word; as now "existing"; exactly what is meant by "obtaining" I do not know.

Mr. DYER. We are very much obliged to you, gentlemen.

Mr. VOLSTEAD. Let me suggest, Judge, would you take this redraft and examine it.

Justice GOULD. You mean 6025?

Mr. VOLSTEAD. The one submitted by Mr. Brown.

Mr. BROWN. I will give the Judge a copy of it.

Mr. VOLSTEAD. You may want to suggest some amendments to it and communicate with the committee.

Justice GOULD. I will do so.

(Thereupon, at 12 o'clock noon, the subcommittee adjourned.)